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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS**DOCKETED**

NOV 18 2003

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF CM
TEL (USA) LLC FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LOCAL EXCHANGE AND
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES.

DOCKET NO. T-04185A-03-0388

DECISION NO. 66568**ORDER**

Open Meeting
November 4 and 5, 2003
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On June 27, 2003, CM Tel (USA) LLC ("Applicant" or "CM") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold local exchange and interexchange telecommunications services within the State of Arizona.

2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

4. CM has authority to transact business in the State of Arizona.

5. On July 21, 2003, CM filed in this docket an Affidavit of Publication verifying that it had published notice of its application in all counties where service will be provided.

1 6. On July 22, 2003, the Commission's Utilities Division Staff ("Staff") filed in this
2 docket a letter informing CM that its application was administratively complete.

3 7. On August 20, 2003, Staff filed a Staff Report in this matter recommending approval
4 of the application subject to certain conditions and making other recommendations.

5 8. In the Staff Report, Staff stated that CM provided the unaudited consolidated financial
6 statements for the 12 months ending March 31, 2003, which list assets of \$5.1 million, equity of
7 \$410,452, and a net income of \$266,896.

8 9. In its Staff Report, Staff stated that based on information obtained from the applicants,
9 it has determined that CM's fair value rate base is zero, and is too small to be useful in setting rates.
10 Staff further stated that in general, rates for competitive services are not set according to rate of return
11 regulation, but are heavily influenced by the market.

12 10. Staff believes that CM has no market power and that the reasonableness of its rates
13 will be evaluated in a market with numerous competitors. In light of the competitive market in which
14 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
15 tariffs for its competitive services will be just and reasonable, and recommends that the Commission
16 approve them.

17 11. Based on its evaluation of the Applicant's technical, managerial, and financial
18 capabilities to provide resold interexchange and local exchange services, Staff recommended
19 approval of CM's application and also recommended that:

20 (a) The Applicant should be ordered to comply with all Commission rules, orders,
21 and other requirements relevant to the provision of intrastate telecommunications
22 service;

23 (b) The Applicant should be ordered to maintain its accounts and records as
24 required by the Commission;

25 (c) The Applicant should be ordered to file with the Commission all financial and
26 other reports that the Commission may require, and in a form and at such times as the
27 Commission may designate;

28 (d) The Applicant should be ordered to maintain on file with the Commission all
current tariffs and rates, and any service standards that the Commission may require;

1 (e) The Applicant should be ordered to comply with the Commission's rules and
2 modify its tariffs to conform to those rules if it is determined that there is a conflict
3 between the Applicant's tariffs and the Commission's rules;

4 (f) The Applicant should be ordered to cooperate with Commission investigations
5 including, but not limited to customer complaints;

6 (g) The Applicant should be ordered to participate in and contribute to a universal
7 service fund, as required by the Commission;

8 (h) The Applicant should be ordered to notify the Commission immediately upon
9 changes to the Applicant's address or telephone number;

10 (i) The Applicant should be required to file an application for Commission
11 approval if at some future date, the Applicant wants to collect from its resold
12 interexchange customers an advance, deposit and/or prepayment, and that the
13 application must reference this Decision and explain Applicant's plans for procuring a
14 performance bond;

15 (j) The Applicant's local exchange service offerings should be classified as
16 competitive pursuant to A.A.C. R14-2-1108;

17 (k) The Applicant's maximum rates should be the maximum rates proposed by the
18 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive
19 services should be the Applicant's total service long run incremental costs of
20 providing those services as set forth in A.A.C. R14-2-1109; and

21 (l) In the event that the Applicant states only one rate in its proposed tariff for a
22 competitive service, the rate stated should be the effective (actual) price to be charged
23 for the service as well as the service's maximum rate.

24 12. Staff further recommended that CM's Certificate should be conditioned upon the
25 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of
26 an Order in this matter, or 30 days prior to providing service, whichever comes first.

27 13. In its application, CM states that it does not collect any advances, deposits and/or
28 prepayments from its interexchange customers. However, monthly service charges for resold local
exchange service are paid in advance.

14. Staff recommended that CM's Certificate should be conditioned upon the Applicant
procuring a performance bond as described in Findings of Fact No. 15 below, and filing proof of that
performance bond within 365 days from the date of an Order in this matter, or 30 days prior to
providing service, whichever comes first.

15. Staff recommended that CM be required to procure a performance bond in the initial amount \$25,000, with the minimum bond amount of \$25,000 to be increased if at any time it would be insufficient to cover all advances, deposits, or prepayments collected from its customers, in the following manner: The bond amount should be increased in increments of \$12,500, with such increases to occur whenever the total amount of the advances, deposits, and prepayments reaches a level within \$2,500 under the actual bond amount.

16. Staff further recommended that the Applicant should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107 if it desires to discontinue service; to notify each of its customers and the Commission 60 days prior to filing such an application to discontinue service; and that failure to make such notification 60 days prior to filing an application under A.A.C. R14-2-1107 should result in forfeiture of Applicant's performance bond.

17. Staff recommended that if the Applicant fails to meet the timeframes outlined in Findings of Fact Nos. 12 and 14 above, that CM's Certificate should become null and void without further Order of the Commission, and that no time extensions for compliance should be granted.

18. The rates proposed by this filing are for competitive services.

19. Staff's recommendations as set forth herein are reasonable.

20. CM's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold local exchange and interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold local exchange and interexchange telecommunications services in Arizona.

1 6. Staff's recommendations herein should be adopted.

2 7. CM's fair value rate base is not useful in determining just and reasonable rates for the
3 competitive services it proposes to provide to Arizona customers.

4 8. CM's rates, as they appear in its proposed tariffs, are just and reasonable and should
5 be approved.

6 ORDER

7 IT IS THEREFORE ORDERED that the application of CM Tel (USA) LLC for a Certificate
8 of Convenience and Necessity for authority to provide competitive resold local exchange and
9 interexchange telecommunications services is hereby granted, conditioned upon its compliance with
10 the conditions recommended by Staff as set forth in Findings of Fact 12 and 14 above.

11 IT IS FURTHER ORDERED that Staff's recommendations set forth herein are hereby
12 adopted.

13 IT IS FURTHER ORDERED that if CM Tel (USA) LLC fails to meet the timeframes
14 outlined in Findings of Fact. Nos. 12 and 14 above, that the Certificate of Convenience and Necessity
15 conditionally granted herein shall become null and void without further Order of the Commission.

16 IT IS FURTHER ORDERED that CM Tel (USA) LLC shall comply with the adopted Staff
17 recommendations as set forth in Findings of Fact Nos. 11, 15 and 16 above.

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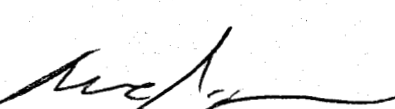

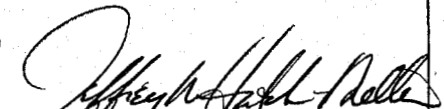
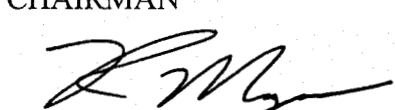
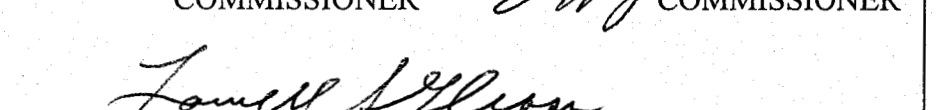
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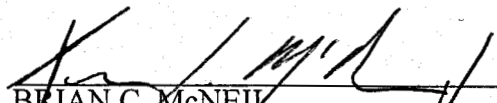
IT IS FURTHER ORDERED that if CM Tel (USA) LLC fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, CM Tel (USA) LLC's performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER
		
COMMISSIONER	COMMISSIONER	

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18th day of November, 2003.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AP:mj

1 SERVICE LIST FOR: CM TEL (USA) LLC

2 DOCKET NO. T-04185A-03-0388

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